

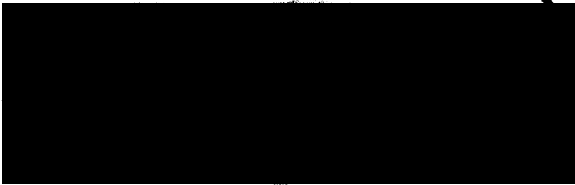
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services



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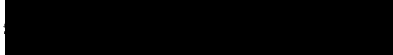
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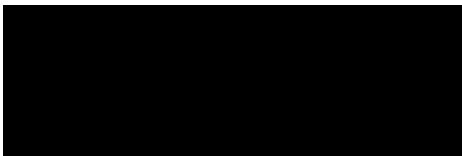
Date: **SEP 10 2004**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, London, England. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the United Kingdom who was found by a consular officer to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The acting officer in charge (OIC) found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen wife. The application was denied accordingly. *Decision of the Acting Officer in Charge*, dated November 6, 2003.

On appeal, counsel asserts that the applicant's spouse has demonstrated extreme hardship in that she is an American. Counsel contends that the father of the applicant's spouse has suffered two recurrent cases of cancer and that the applicant's spouse has an established career as a designer, a career that is closely tied to the American market. *Attachment to I-290B*, dated December 3, 2003.

Counsel also asserts that the applicant and his spouse were denied equal protection rights pursuant to the 5th Amendment. Constitutional issues are not within the appellate jurisdiction of the AAO, therefore this assertion will not be addressed in the present decision.

The record contains a brief, dated December 3, 2003; an affidavit of the applicant's spouse, dated December 3, 2003; an affidavit of the parents of the applicant's spouse, dated November 28, 2003; copies of medical records pertaining to the condition of the father of the applicant's spouse; letters of support; copies of cards and photographs evidencing the engagement and marriage of the applicant and his spouse; a letter from a clinical social worker, dated December 15, 2003 and a brief, dated December 31, 2003. The entire record was reviewed and considered in rendering a decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that the applicant entered the United States on a visitor visa on or about June 29, 1993. The applicant was authorized to remain in the United States until September 28, 1993. There is no record verifying when the applicant departed from the United States. The applicant was again admitted as a visitor on September 12, 1994 with authorization to remain until December 11, 1994. There is no record verifying when the applicant departed from the United States. The applicant was admitted as a visitor again on September 2, 1999 with authorization to remain until December 1, 1999. There is no record verifying when the applicant departed from the United States. On March 5, 2003, the applicant was denied entry into the United States as a Visa Waiver Program violator and was ordered removed from the United States. The applicant admits to illegal employment in the United States from at least April 1997 until March 2003. The applicant, therefore, accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until the date he departed from the country in 2003. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that the applicant's wife would face extreme hardship if she relocated to the United Kingdom in order to remain with the applicant. Counsel indicates that the applicant's wife has lived her entire life in the United States and that her family has a rich history in her native country. *Affidavit of Christine Cotter Chell*, dated December 3, 2003 ("My parents, grandparents, great and even great-great grandparents were also born in Ohio. My grandfather served the United States in World War I, my uncles in World War II and the Korean War, and my father enlisted in the Army.") Counsel contends that the father of the applicant's spouse has experienced recurrent complications from two types of cancer requiring the applicant's spouse to remain near her parents. *Id.* ("The guarded nature of [my parents'] health and our close knit family demands that I be in America.") Counsel further

indicates that the applicant's wife would experience hardship as a result of abandoning her career in design because she would be unable to establish a comparable one in the United Kingdom. Counsel indicates that the applicant's spouse "started out without any fashion industry connections in building her career from her skilled talents and perseverance." *Brief in Support of Section 212(a)(9)(B)(i)(II) I-601 Waiver*, dated December 3, 2003.

Counsel does not establish extreme hardship to the applicant's wife if she remains in the United States in order to maintain her close familial relationships, successful, particularized employment and legacy as an American citizen. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel submits a letter from a clinical social worker to support the assertion that the applicant's spouse suffers emotionally as a result of separation from the applicant. *Letter from Ellen Nelson, CSW-BCD*, dated December 15, 2003. The social worker states that an international relocation would be deleterious to the mental health of the applicant's spouse. The letter also states that the applicant's spouse suffers symptoms of depressed mood as a result of separation from her husband. *Id.* The AAO notes that the record fails to establish a continuing relationship between the applicant's spouse and a mental health professional. The submitted letter from a clinical social worker fails to evidence further treatment or medication prescribed to the applicant's spouse as a result of her symptoms and fails to establish a condition rising to the level of extreme.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's wife endures hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. The record demonstrates that the applicant and his spouse have never resided together as a married couple furthering weakening the claim of hardship by his spouse.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.